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IN THE HIGH COURT OFJUDICATURE AT BILASPUR

W.P. No 3511 of 2004.

PETITIONERS:

1. M/s Annapurna Malleables Pvt. Ltd. A company duty incorporated under the provisions of the Companies Act, 1956 having its registered office and works at 19, New Industrial Area, Sarona Ring Road No.2, RAIPUR

2. Shri Kapiraj Singhania, aged 43 years Son of Shri Maloo Ram Singhania, Shareholder and Managing Director of Annapurna Malleables Pvt. Ltd. 19, New Industrial Area, Sarora, Ring Road No.2, RAIPUR

3531/04 P. Shri Kamal Das Presented on 25/9/04 dated

Versus

RESPONDENTS:

1. State of Chhattisgarh through the Principal Secretary, Commercial Tax, RAIPUR

2. The Commissioner, Commercial Tax, RAIPUR

3. Commercial Tax Officer, Circle -2 RAIPUR

25/9/04

संयुक्त आयुक्त 23/9/04

PETITION UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3511 of 2004

M/s. Annapurna Malleables Pvt. Ltd., and another

- Versus -

State of Chhattisgarh and two others

POST FOR ORDER ON 5th OCTOBER, 2004

Sd/-
L.C. Bhadoo
Judge

5.10.2004

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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Writ Petition No.3511 of 2004

M/s. Annapurna Malleables Pvt. Ltd., and another

- Versus -

State of Chhattisgarh and two others

Present: -

Mr. R.S. Jha, Senior Advocate with
Mr. Sanjay K. Agrawal, Advocate: For the petitioners.

Mr. N.K. Agrawal, Deputy Advocate General: For the State/respondents.

ORDER

(Passed on 5th October, 2004)

L.C. BHADOO, J.

1. By this writ petition under Articles 226 & 227 of the Constitution of India, the petitioners seek the quashment of recovery notices dated 27.8.2004 (Annexure P-6), also twelve notices (Annexure P-7) and notice of attachment (Annexure P-5).

2. Brief facts leading to filing of this writ petition are that petitioner No.1 is a Company registered under the provisions of the Companies Act, 1956, and petitioner No.2 is the Managing director of petitioner No.1 Company. The Company is situated at Raipur and engaged in the business of manufacture of iron casting. As the petitioner Company suffered heavy losses, therefore, it approached the Board for Industrial Finance and Reconstruction (BIFR), established under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985 (SICA), and was declared as sick industry vide order dated 10.6.1991. The BIFR sanctioned a rehabilitation package vide order dated 27th September, 1996 (Annexure P-1) in exercise of its powers under Section 18 (4) read with Section 19 (3) of the SICA. The case of the petitioner is that this facility was granted in the package by the BIFR for a period of ten years commencing from 27th September,

1996 to 26th September, 2006. The benefit and concession as granted by the BIFR in the rehabilitation package has the overriding affect over all laws in view of the provisions of Section 22 of the SICA. The controversy in the present case, which centers around is that first notices were issued by the respondents for recovery of the sales tax arrears (Annexures P-3 & P-4) for the period 1987-88, thereafter, second notice for the period 1.4.1993 to 31.3.1994 were issued and ultimately, the same was included in notice dated 7.5.2004 (Annexure P-5), and a consolidated notice proposing the recovery of dues from 1984 onwards till December, 2003 was issued to the petitioner. In reply to that the petitioner Company explained that the Company is declared as a sick industrial unit and its rehabilitation package has been sanctioned and is under implementation since 1996 in which it has been specifically directed that the petitioner Company be declared relief undertaking for ten years and all its sales tax dues be deferred for ten years i.e. up to 2006. The sanctioned scheme has specifically dealt with all the tax dues which have accrued and would be accruing till the period 2006 the same cannot be recovered without express permission of the BIFR by the respondents. The petitioners have requested that notices Annexures P-5, P-6 & P-7 be quashed, and the respondents be directed to release and permit the petitioners to operate their bank account and further not to take up any coercive recovery proceedings against the petitioners without obtaining prior permission or sanction from the BIFR.

3. Reply has been filed on behalf of the State/ respondents in which it has been admitted that the rehabilitation scheme was sanctioned by the Board vide order dated 27.9.1996 and the erstwhile State of Madhya Pradesh was directed by the Board to declare the petitioner Company as 'relief undertaking unit' for a period of ten years and also to defer the sales tax dues during that period. The erstwhile State of Madhya Pradesh declared the petitioner Company as relief undertaking unit for a period of seven years commencing from 4.6.1993 to 30.9.2000. After the formation of the State of Chhattisgarh w.e.f. 1.11.2000, the petitioner Company was not

declared as relief undertaking unit by the State of Chhattisgarh. But the bar/embargo envisaged under Section 22 (1) of the SICA can apply only to such of those dues reckoned or included in the sanctioned scheme, such amounts like sales tax etc., which the sick industrial companies are enable to collect after the date of the sanctioned scheme legitimately belonging to the revenue, cannot be and could not have been intended to be recovered within Section 22 of the Act. Notice Annexure P-7 relates to recovery of Rs.3,68,92,883-00 for the period 1993-94 to 2003-2004 (Annexure R-1). Therefore, there is no prima facie case in favour of the petitioners and the respondents are recovering the legitimate tax dues.

4. As the facts are admitted and there is no controversy or dispute regarding the facts that the petitioners are collecting sales tax on the iron items which are being sold by the petitioners and it is also admitted that the BIFR sanctioned the rehabilitation scheme under Section 18 (4) of the SICA on 27.9.1996 for a period of ten years, therefore, the only question which remains for the decision of this Court is that whether in view of Section 22 (1) of the SICA, the respondents are not entitled to recover the sales tax which has been collected by the petitioners through sale ever after the sanction of the rehabilitation scheme under Section 18 (4) of the SICA. Since the facts are not disputed and reply has been filed by the respondents, and the order disposing of the application will be similar to granting final relief, therefore, this petition is being disposed of at the admission stage itself.

5. I have heard learned counsel for the parties.

6. Learned Senior Counsel appearing on behalf of the petitioners argued that as per the scheme at page 28, the Government of Madhya Pradesh was directed to waive the minimum penal and surcharge levied by the MPEB; to declare the unit as 'relief undertaking' for a period of ten years; to defer the sales tax dues till the unit remains as 'relief undertaking'; and to grant reliefs and concessions as above within one month of the date of sanction of the scheme. Therefore, for ten years, even the sales tax has been

deferred and the respondents are not entitled to recover the sales tax till the scheme period is over by 26th September, 2006. In support of his argument, learned Senior Counsel relied upon the decisions of the M.P. High Court reported in **(2004) 3 STJ 137 (MP) {Steel Ingots Ltd. v. State of Madhya Pradesh and another}**; **(2003) 2 STJ 351 (MP) {Reliance Ispat Industries Ltd. and another v. Commissioner of Sales Tax, M.P. and others}**; and **(1997) 6 SCC 669 {Tata Davy Ltd. v. State of Orissa and others}**. He further argued that as per the document furnished by the respondents (Annexure R-1), even the respondents are adopting coercive methods for recovery of tax, which has not been assessed so far by the respondents Sales Tax Department.

7. On the other hand, learned Deputy Advocate General argued that as per the decision of the Hon'ble Apex Court in the matter of **Deputy Commercial Tax Officer and others v. Corromandal Pharmaceuticals and others** reported in **(1997) 10 SCC 649**, in the present case, provisions of Section 22 (1) of the SICA are not attracted as the respondents are entitled to recover the sales tax which has been collected by the petitioners after the sanction of the scheme.

8. In this connection, it will be useful to quote Sections 22 (1) and 22 (5) of the SICA which read thus: -

> "**22. Suspension of legal proceedings, contracts, etc.**--(1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof [and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company] shall lie or be proceeded with further,

except with the consent of the Board or, as the case may be, the Appellate Authority.

(5) In computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded."

9. After interpreting the above provisions, the Hon'ble Apex Court in the matter of **Deputy Commercial Tax Officer (Supra)** held that

> "the language of Section 22 of the Act is certainly wide. But, in the totality of the circumstances, the safeguard is only against the impediment, that is likely to be caused in the implementation of the scheme. If that be so, only the liability or amounts covered by the scheme will be taken in, by Section 22 of the Act. So, we are of the view that though the language of Section 22 of the Act is of wide import regarding suspension of legal proceedings from the moment an inquiry is started, till after the implementation of the scheme or the disposal of an appeal under Section 25 of the Act, it will be reasonable to hold that the bar or embargo envisaged in Section 22 (1) of the Act can apply only to such of those dues reckoned or included in the sanctioned scheme. Such amounts like sales tax, etc., which the sick industrial company is enabled to *collect after the date of the sanctioned scheme* legitimately belonging to the Revenue, cannot be and could not have been intended to be covered within Section 22 of the Act. Any other construction will be unreasonable and unfair and will lead to a state of affairs enabling the sick industrial unit to collect amounts due to the Revenue and withhold it indefinitely and unreasonably. Such a construction which is unfair, unreasonable and against the spirit of the statute in a business sense, should be avoided."

10. Therefore, in view of the above law laid down by the Hon'ble Apex Court, the sales tax collected by the petitioner Company after the sanction of the scheme i.e. 27.9.1996, the respondents are entitled to recover the sales tax from the petitioners and for recovery of that sales tax by the respondents, the provisions of Section 22 (1) of the SICA are not attracted. However, any tax collected before 27.9.1996 is covered under Section 22 (1) of the SICA. In the matter of **Tata Davy Ltd. (Supra)**, the above case of **Deputy Commercial Tax Officer (Supra)** was considered in para 13 and the Hon'ble Apex Court held that the facts of

Tata Davy Ltd. case were different and on facts, Corromandal Pharmaceuticals case was not applicable. Therefore, the law laid down by the Hon'ble Apex Court in the case of Corromandal Pharmaceuticals (supra) still holds the field and that has not been overruled or reviewed and the Corromandal Pharmaceuticals case facts are identical to that of the present case. In the circumstances, Tata Davy Ltd. (Supra) is of no help to the petitioners. Similarly, the other two cases cited by the learned counsel for the petitioners are also of no help to them in view of the above Hon'ble Apex Courts judgment in Corromandal's case.

11. Therefore, I have no hesitation in coming to the conclusion that the respondents are entitled to recover the sales tax, which has been collected by the petitioner Company after 27.9.1996. However, any sales tax collected prior to that stands deferred as per the sanctioned scheme dated 27.9.1996.

12. Now, coming to the question as to how much amount is recoverable out of the total amount said to be recoverable as per the respondents' case i.e. Rs.3,68,94,998/-. The total figures have been shown by the respondents in Annexure R-1 and as per their own admission, since 2000-01, the return submitted by the petitioners is pending for scrutiny and no assessment order has been passed. Therefore, in the circumstances, it is held that till 1999 up to which period the assessment has been made, the respondents are entitled to recover the assessed sales tax amount with effect from 28.9.1996 up to the year 1999 as per the sales tax collected by the petitioners. However, from the year 2000, in the first instance, the respondents shall collect the sales tax from the petitioners as per the admission of the petitioners, which has been shown in their sales tax return that how much sales tax amount has been collected by them. The rest of the amount, if any remains to be realized after the assessment order is passed, then the respondents will be entitled to realize that amount after the assessment order is passed.

13. In the result, the writ petition is disposed of with the following directions:

a. The notices issued by the respondents Annexures P-5, P-6 & P-7 are quashed to the extent indicated in para 12 of this order and the respondents are restrained from recovering any sales tax, which was collected by the petitioners up to 27.9.1996 i.e. the day of sanctioning of the scheme.

b. From 28.9.1996 the respondents are entitled to recover the sales tax as per the assessment order and from the year 2000 onwards, the respondents are entitled to recover the sales tax which has been admitted by the petitioners in their sales tax return to be paid by the petitioners and remaining amount, if any, remains due as per the assessment order passed later on, then the respondents will be allowed to realize that amount after passing of the assessment order.

c. In view of the above orders, the respondents may recover the amount from the petitioners to the extent indicated above and they should release the rest of the amount which remains in the account of the petitioners and thereafter, they should allow the petitioners to operate their bank account.

d. The respondents shall complete this exercise within seven days from the date of passing of this order and after realization of the sales tax amount as indicated above should release the bank accounts of the petitioners.

Sd/-
L.C. Bhadoo
Judge

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